



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUN 28 1999

Mr. Lawrence Gloeckler  
Deputy Commissioner for Vocational and  
Educational Services for Individuals  
with Disabilities  
State Education Department  
1 1 1 Education Building  
Washington Avenue  
Albany, New York 12234

Dear Mr. Gloeckler:

This letter addresses the method used by the New York State Education Department (NYSED) to distribute federal grant funds under Section 619 of the Individuals with Disabilities Education Act (the Preschool Grants Program). Staff from the Office of Special Education Programs (OSEP) obtained information about New York's method of distributing Section 619 funds during the weeks of February 8 and April 19, 1999, while conducting compliance monitoring activities in New York. The statutory and regulatory requirements regarding a State's distribution of Section 619 funds to eligible grantees, New York's method of distributing funds, and corrective actions to be taken are set forth in this letter. This letter is being issued separately from OSEP's monitoring report because the NYSED must develop procedures for distributing Preschool Grant funds, and obtain OSEP's written approval of the procedures, prior to distributing federal fiscal year 1999 Preschool Grants funds available July 1, 1999.

Procedures for State educational agencies to allocate Section 619 funds to eligible local educational agencies are found at 34 CFR §§301.30-301.32 (June 10, 1998, copy enclosed). The State allocation to each eligible local educational agency is the total of three amounts. (1) The *base payment* is the amount the local educational agency would have received in federal fiscal year 1997 had the State allocated 75% of its federal fiscal year 1997 award to the local level. The regulations at 34 CFR §301.31(b) provide information on the circumstances when base payments should be adjusted. (2) The *population payment* (85 percent of the remaining flow-through funds after the base payments are made) is an amount based on the eligible agency's relative numbers of children enrolled in public and private elementary and secondary schools within the local educational agency's jurisdiction. Notice that this is not the preschool-aged population in the local educational agency, nor is it related to disability. States must use the best data available on the numbers of children enrolled in public and private elementary and secondary schools. States are not required to establish new data collection procedures in order to obtain private school enrollment figures. (3) The *poverty payment* (15 percent of the remaining flow-through funds after the base payments are made) is an amount based

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on the eligible agency's relative number of children living in poverty, as determined by the State educational agency. The poverty factor chosen must be applied uniformly to all eligible subgrantees.

### **1. Eligible subgrantees**

In order to receive Section 619 funds, local educational agencies must establish eligibility under Section 613 of the Individuals with Disabilities Education Act (the Act) and must make a free appropriate public education available to all 3-, 4-, and 5-year-old children with disabilities. The age of children with disabilities served is the defining factor, not the title of the program, such as "kindergarten" rather than "preschool." "Local educational agency" is defined at 34 CFR §300.18, and includes educational service agencies (including entities that meet the definition of *intermediate educational unit* in section 602(23) of the Act as in effect prior to June 4, 1997) and public charter schools established as local educational agencies under State law. State agencies that received funds for fiscal year 1994 under the Chapter 1 Handicapped program (subpart 2 of part D of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965) are treated as local educational agencies for purposes of section 619 to the extent that these agencies participate in the Preschool Grants program.

According to information provided OSEP staff, the NYSED distributes section 619 funds that it is required under section 619(g)(1) to allocate to local educational agencies, directly to the "approved preschool programs" where the children are served. Approved preschool programs can be found in local educational agencies, private schools, BOCES programs, and state-operated/state-supported programs. In federal fiscal year 1998, section 619 grants were allocated to private schools, local educational agencies, BOCES programs, and state-supported (4201) programs. The NYSED intends to distribute federal fiscal year 1999 and subsequent Section 619 funds directly to approved preschool programs, including approved preschool programs in private schools.

In accordance with section 619(g)(1), each State must distribute any section 619 funds that it does not reserve for State activities under section 619(d), to local educational agencies that have established their eligibility under section 613 of the Act. In order to ensure that only eligible subgrantees receive funding, NYSED must determine whether the "approved preschool programs", including BOCES and section 4201 programs, fit within the definition of "local educational agency" (34 CFR §300.18). (The definition of "local educational agency" includes an "educational service agency" as defined in §300.10) Private preschools do not fit within the definition of local educational agency and therefore are not eligible subgrantees. Using "approved preschool program" as the determining criterion of "eligible local educational agency" is insufficient for meeting the requirements under section 619(g)(1) of the Act.

## **2. Base payments to eligible subgrantees**

According to the information provided OSEP staff, the NYSED will annually calculate base payments using the most recent preschool child count in order to allow for annual upward and downward changes in the number of children served in each approved preschool program. This is inconsistent with section 619(g)(1)(A) of the Act which provides that the base payment must be calculated based on the amount the LEA would have received under section 619 for federal fiscal year 1997 if the State had distributed 75 percent of its Preschool grant. While NYSED may not adjust base payments to compensate local educational agencies who have an increase in their preschool count, it may provide additional funds to those local educational agencies by using its State set aside funds.

The regulations at §301.31 (a) and (b) specify how base payments are to be calculated and the circumstances under which a State must make adjustments to base payments. Base payment amounts remain constant from year to year unless certain circumstances requiring recalculation of some base payments occur. The circumstances, found in §§301.31(b), include the creation of a new local educational agency, the consolidation of more than one local educational agency into a single new local educational agency, or when changes occur for two or more local educational agencies to the geographic boundaries or administrative responsibility for providing services to children with disabilities ages 3 through 5. For example, a change in administrative responsibility might encompass a change in the age range for which a local educational agency is responsible for providing services such as where responsibility for serving 3 and 4 year olds is transferred from one local educational agency to another. Annual fluctuations in an eligible local educational agency's count of 3-, 4-, and 5-year-old children with disabilities being served is not a criterion for adjusting base payments. Base payments may only be adjusted if one of the circumstances in 34 CFR §301.31 (b) occurs.

## **3. Population allocations to eligible subgrantees**

The population payment, as explained previously in this letter, is an amount based on the eligible local educational agency's relative numbers of children enrolled in public and private elementary and secondary schools within the local educational agency's jurisdiction. Under 34 CFR §301.31 (c) (1) and (3), States must apply on a uniform basis across all local educational agencies the best data that are available to them on the numbers of children enrolled in public and private elementary and secondary schools. According to information provided to OSEP staff, BOCES and state operated/state-supported programs do not receive population payments. Eligible BOCES and state-operated /supported programs that fit within the definition of local educational agency, and are therefore eligible subgrantees, cannot be excluded from the population payment. The population payment can be allocated based on the numbers of children enrolled in programs within the jurisdiction of BOCES or state operated/supported programs. In instances where a child is dually enrolled in a local educational agency and a regional or

state program, the State must determine which entity will include the child in its enrollment count for the purpose of receiving the population payment.

#### **4. Poverty allocations to eligible subgrantees**

The poverty payment, as previously explained in this letter, is an amount based on the eligible local educational agency's relative numbers of children living in poverty, as determined by the State educational agency. Under 34 CFR §301.31 (c) (3), States must apply on a uniform basis across all local educational agencies the best data that are available to them on the numbers of children living in poverty. It is possible that a local educational agency will not receive a poverty payment, but the criteria must be applied to all eligible local educational agencies. According to information provided to OSEP staff, NYSED uses state poverty data called "extraordinary needs districts" and BOCES and state-operated/supported programs are excluded from the "extraordinary needs" determination. The State has discretion in determining the type of data used to determine the number of children living in poverty. However, that data must be applied on a uniform basis across all eligible local educational agencies, including BOCES and state-operated/supported programs that fit within the definition of local educational agency. The data selected must enable the State to calculate for each eligible subgrantee the numbers of children living in poverty.

In summary, information provided OSEP staff indicates that the NYSED has not implemented the Section 619 funding formula in accordance with statutory and regulatory requirements. In order to ensure that NYSED distributes its Preschool Grant funds in accordance with section 619 of the Act and its implementing regulations at 34 CFR Part 301, NYSED must:

1. Revise its procedures to ensure that only eligible subgrantees receive Section 619 funds in accordance with the requirements at section 619(g)(1) of the Act and 34 CFR 301.30. NYSED must also revise its procedures for making allocations to eligible subgrantees in order to meet the requirements of section 619(g)(1) of the Act and 34 CFR 301.31.
2. Obtain OSEP's written approval of the procedures developed under #1 prior to distributing Federal fiscal year 1999 Preschool Grant funds.
3. Upon approval of those procedures, make appropriate adjustments to the Federal fiscal year 1998 Preschool grant allocations to ensure that each eligible local educational agency receives the amount of Preschool grant funds to which it was entitled in Federal fiscal year 1998 under section 619(g).

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We look forward to receiving your revised procedures in the near future so that delays in State distribution of federal fiscal year 1999 Preschool Grant funds can be avoided. Should you require assistance, please contact Ms. Nancy Treusch, Preschool Grants Coordinator, at (202) 205-9097 or Ms. Leis Taylor, Associate Division Director, Team C, at (202) 205-2776.

Sincerely,

Thomas Hehir  
Director  
Office of Special Education Programs

Enclosure.